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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

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COPY

THE SCO GROUP, INC.,

Plaintiff/Counterclaim Defendant,

vs.

No. 2:04CV00139

NOVELL, INC.,

Defendant/Counterclaim Plaintiff,

Videotaped Rule 30 (b) (6) Deposition of

MICHAEL J. DANAHER

Friday, April 27, 2007

Reported by:

Leslie Rockwood

CSR No. 3462

Job No. 193580

Esquire Deposition Services
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11:46:49 1 have talked to the Novell team about this without getting
 11:46:54 2 permission from the client.

11:46:56 3 Q. And would it have been a conflict, in your
 11:46:58 4 view, for the Wilson Sonsini team in 2000 to read and
 11:47:03 5 interpret the 1995 transaction documents --

11:47:07 6 A. And give advice to SCO?

11:47:09 7 Q. Right. And then give advice to SCO?

11:47:12 8 A. Yeah, yeah, that would be a conflict. And it
 11:47:14 9 would be unwise for us; right? To be giving advice to
 11:47:18 10 both sides on what something meant. It would be a
 11:47:20 11 conflict and it would be unwise.

11:47:22 12 Q. And is that something that occurred to you at
 11:47:24 13 the time in 2000 or 2001?

11:47:28 14 MR. PARNES: Lacks foundation.

11:47:30 15 You can answer.

11:47:31 16 THE WITNESS: I don't think we were ever
 11:47:33 17 asked to read it. You know, this was Steve Sabbath had
 11:47:38 18 handled all this without -- (indicating) on his side
 11:47:41 19 without help from Wilson, was handling the IP licensing
 11:47:45 20 part of the Caldera transaction without our help. So he
 11:47:47 21 wouldn't have asked for my interpretation of that.

11:47:49 22 Q. BY MR. NORMAND: So the phrasing of the
 11:47:51 23 question was -- I understand what counsel's objecting
 11:47:53 24 to -- is this something you thought of?

17:56 25 A. No, I didn't. I didn't.

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11:47:57 1 Q. It didn't come up?

11:47:58 2 A. It didn't come up. And I didn't know the

11:48:01 3 details of whatever the agreement was between SCO and

11:48:04 4 Novell. In my mind, you know, the higher level would

11:48:10 5 have been whatever SCO's rights are go in that bucket

11:48:14 6 that are being transferred over to Caldera, and whatever

11:48:16 7 they are they are. You know, other people can read that

11:48:19 8 and figure it out.

11:48:23 9 Q. And was your -- were you willing to take that

11:48:29 10 approach that you just described in your answer as a

11:48:32 11 function of confidence you had in Steve Sabbath and his

11:48:35 12 team or were there other factors at play?

11:48:38 13 A. Well, confidence -- first, he's the one

11:48:46 14 running the show, number one. Number 2, they're the ones

11:48:50 15 with -- whose responsibility it was in this transaction,

11:48:52 16 handling the license and IP part. Number 3, what SCO was

11:48:58 17 essentially representing to you here is we're describing

11:49:00 18 to you everything we have that's being transferred.

11:49:04 19 Here's all the patent numbers, here's all the third-party

11:49:08 20 agreements, et cetera. Go and read them.

11:49:10 21 And that's -- and so it wasn't that SCO

11:49:15 22 was -- here I'm going to go partly into what's in a

11:49:19 23 typical transaction. You're just telling the buyer

11:49:21 24 here's all the stuff you need to be aware of and here's

11:49:24 25 what you're getting, here's a list of agreements, there's

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11:49:28 1 correspondence if you need to see it, et cetera, and you
 11:49:30 2 make that information available to the buyer. And you
 11:49:33 3 try to avoid interpreting particular things, if you can.
 11:49:39 4 You just say it is what it is, you know, this is our
 11:49:42 5 business.

11:49:42 6 Q. I mean, this goes to something we discussed
 11:49:47 7 earlier, but I think it's a distinct issue. You must
 11:49:50 8 come across clients who you say we have to do everything
 11:49:53 9 for them. I mean, it's a small company, or they're just
 11:49:56 10 not competent.

11:49:57 11 A. Okay.

11:49:57 12 Q. So what I'm trying to explore is: Why, with
 11:50:00 13 respect to Santa Cruz, if I've understood what you've
 11:50:02 14 said, were there categories of these transaction
 11:50:05 15 documents that Wilson Sonsini did not get involved with?
 11:50:09 16 Why were you comfortable on behalf of the firm with that
 11:50:14 17 scenario?

11:50:15 18 MR. PARNES: Counsel, it's been asked and
 11:50:17 19 answered several times.

11:50:17 20 THE WITNESS: Yeah, it's our responsibility
 11:50:19 21 to serve SCO and to play the role they want us to play
 11:50:24 22 and not to run up the bill. So we do what -- you know,
 11:50:32 23 how the client wants the task allocated.

11:50:36 24 Q. BY MR. NORMAND: What if you have a client
 11:50:38 25 that is saying the same things, but you think they're

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12:25:36 1 Q. BY MR. BRAKEBILL: Turn your attention to
 12:25:38 2 page 39.

12:25:46 3 A. Bates Numbered 39?

12:25:47 4 Q. The page 39 of the proxy statement.

12:25:50 5 A. Okay.

12:25:50 6 Q. And at the very bottom, it says "Dissenter's
 12:25:54 7 Rights"?

12:25:54 8 A. Okay.

12:25:54 9 Q. If you could take a quick moment to look at
 12:25:57 10 that.

12:25:57 11 A. Yes.

12:25:57 12 Q. Does this refresh your memory that Santa Cruz
 12:26:00 13 was provided dissenter's rights --

12:26:02 14 A. Yeah, Santa Cruz shareholders.

12:26:03 15 Q. Santa Cruz shareholders were provided
 12:26:06 16 dissenter's rights?

12:26:08 17 A. Yes, yes.

12:26:08 18 Q. As you sit here today, do you have any
 12:26:11 19 understanding as to why dissenter's rights were given to
 12:26:15 20 Santa Cruz shareholders?

12:26:15 21 A. It would have been required by the corporate
 12:26:17 22 code.

12:26:18 23 Q. Do you know why it would have been required
 12:26:19 24 by the corporate code?

12:26:21 25 A. Because it was a sale of substantially all of

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12:26:23 1 the assets of the business.
12:26:25 2 MR. BRAKEBILL: No more questions.
12:26:26 3 MR. NORMAND: I have no questions.
12:26:30 4 MR. PARNES: All right, gentlemen.
12:26:33 5 THE VIDEOGRAPHER: This concludes today's
12:26:38 6 proceedings. The number of videotapes used was two. We
12:26:42 7 are now going off the video record. The time is
12:26:48 8 12:26 p.m.

9 (The deposition concluded at 12:26 p.m.)

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1 REPORTER'S CERTIFICATE

2 I certify that the witness in the foregoing
3 deposition,

4

5 was by me duly sworn to tell the truth, the whole truth
6 and nothing but the truth in the within-entitled cause;
7 that said deposition was taken at the time and place
8 herein named; that the testimony of said witness was
9 reported by me, a duly certified shorthand reporter and
10 a disinterested person, and was thereafter transcribed
11 under my direction into typewriting.

12 I further certify that I am not of counsel or
13 attorney for either or any of the parties to said
14 deposition, nor in any way interested in the outcome of
15 the cause named in said caption.

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